



GARY R. HERBERT
Governor

GREGORY S. BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

February 8, 2011

CERTIFIED RETURN RECEIPT
7004 2510 0004 1824 7395

Bruce Evans
Nephi Sandstone Corp.
PO Box 137
Nephi Utah 84648

Subject: Proposed Assessment for State Cessation Order #. MC-2010-42-01, Nephi Sandstone Corp. Soma Mine, S/023/0065, Juab County, Utah

Response Due By: 30 Days of Receipt

Dear Mr. Evans:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the assessment officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the referenced cessation order. The order was issued by Division inspector Wayne Western on May 5, 2010. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$2,530. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this cessation order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'fact of the violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an informal conference within thirty 30 days of receipt of this letter.




Page 2 of 6
Bruce Evans
S/023/0065
February 8, 2011

The informal conference will be conducted by a Division-appointed conference officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty. If you wish to review both the fact of the violation and proposed penalty assessment, you should file a written request for an assessment conference within thirty (30) days of receipt of this letter. In this case, the assessment conference will be scheduled immediately following the review of the fact of the violation.

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty (30) days of the date of this proposed assessment (by March 10, 2011). Please remit payment to the Division in care of Vicki Bailey.

Sincerely,



Lynn Kunzler
Assessment Officer

LK:eb

Enclosure: Proposed assessment worksheet

cc: Vicki Bailey, Accounting
Vickie Southwick, Exec. Sec.

P:\GROUPS\MINERALS\WP\M023-Juab\S0230065-Soma\final\Pro-assess-3905-02022011.doc

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Nephi Sandstone, Corp. PERMIT S/023/0065

NOV / CO # MC-2010-42-01

ASSESSMENT DATE February 2, 2011

ASSESSMENT OFFICER Lynn Kunzler

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today=s date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector=s and operator=s statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
Loss of reclamation potential.
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

******Mining operations had left overhanging rock on the highwall. Rock was fractured and could possibly fall with even free/thaw cycle. Area was not secure from the public and along a public highway. Points assigned an mid-point of the Likely range.***

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 13

PROVIDE AN EXPLANATION OF POINTS:

******With the site along a public highway, and unsecured, the general public had easy access to the area that would be impacted by a potential rock fall. While the event did not occur, potential damage would be likely. Points assigned mid-point of the range.***

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 28

III. **DEGREE OF FAULT** (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligent

ASSIGN NEGLIGENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

*** *A prudent operator would realize the danger of overhanging rock in a fractured rock face, and would likely have at least secured the area (blocked it from public access or placed signs warning of the hazard). This situation would also be considered a violation of MSHA rules to mine under these type of conditions. Points were therefore assigned at the top end of the Negligence range.*

IV. **GOOD FAITH** (Max 20 pts.) (R467-7-103.2.14)

The operator did not abate this violation in a timely manner. In fact a Failure to Abate citation was issued. Therefore, good faith points cannot be awarded.

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	

